

Assembly Bill No. 2443

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 27, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1506 of the Public Utilities Code, and to amend Sections 13580, 13580.5, and 13580.7 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2443, Rendon. Water Recycling Act of 1991: mutual water companies: duplication of service.

(1) The Water Recycling Act of 1991 establishes a statewide goal to recycle a total of 1,000,000 acre-feet of water per year by the year 2010. In order to achieve this goal, the act requires retail water suppliers to identify potential uses for recycled water within their service areas, potential customers for recycled water service within their service areas, and, within a reasonable time, potential sources of recycled water. The act authorizes a retail water supplier that has identified a potential use or customer to apply to a recycled water producer or wholesaler for a recycled water supply and authorizes a recycled water producer or wholesaler that has identified a potential use or customer to request, in writing, a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

This bill would authorize a recycled water producer or wholesaler that has identified a potential use or customer within the service area or jurisdiction of the retail water supplier, to request, in writing, a retail water supplier to enter into an agreement to provide recycled water to the potential customer consistent with specified requirements of the act.

The Water Recycling Act of 1991 includes specific requirements that are applicable only to a retail water supplier that is a public agency.

This bill would extend those provisions to a mutual water company formed and operating pursuant to specified provisions of the Corporations Code.

(2) Existing law states that the Legislature finds and declares that whenever a political subdivision, as defined, constructs facilities to provide or extend water service, or provides or extends water service, to any service area of a private utility, as defined,

with the same type of service, this act constitutes a taking of the property of the private utility for a public purpose to the extent that the private utility is injured by reason of any of its property employed in providing the water service being made inoperative, reduced in value, or rendered useless to the private utility for the purpose of providing water service to the service area. Existing law requires that a political subdivision that makes such a taking of the property of a private water utility pay just compensation for the property taken for a public purpose. A mutual water company is a private utility for these purposes to the extent that its property is employed by the company in providing water service in or for a territory that is actually being provided with water service when the political subdivision constructs facilities to provide, or extends water service to, the territory serviced by the mutual water company. Existing law establishes an exception that is applicable only to Los Angeles County with respect to the use of reclaimed water.

This bill would make inapplicable the provision that a mutual water company is a private utility entitled to just compensation for a taking in a territory it services at the time of the taking when a political subdivision constructs facilities to provide or extend recycled water service to the territory of the mutual water company, if the political subdivision complies with the Water Recycling Act of 1991. This exception would not apply to those customers and their properties to which the mutual water company was providing recycled water service, or for whom the mutual water company has identified and developed specific plans to provide recycled water service, as of December 31, 2014.

The people of the State of California do enact as follows:

SECTION 1. Section 1506 of the Public Utilities Code is amended to read:

1506. (a) As used in this chapter, “private utility” includes a mutual water company. In its application to mutual water companies, this chapter affects and relates only to the property, or portion of any property, of a mutual water company that is employed by the company in providing water service in or for a territory that is actually being provided with water service by the company when a political subdivision constructs facilities to

provide or extend water service or provides or extends the service to the territory, and that territory shall constitute the “service area” of a mutual water company as used in Section 1502.

(b) Subject to the preservation of rights of a mutual water company in subdivision (c), this section does not apply to a political subdivision that constructs facilities to provide or extend recycled water service to the territory of the mutual water company, if the political subdivision complies with the Water Recycling Act of 1991 (Chapter 7.5 (commencing with Section 13575) of Division 7 of the Water Code).

(c) The exception in subdivision (b), for a political subdivision that constructs facilities to provide or extend recycled water service to the territory of the mutual water company, does not apply to those customers and their properties to which the mutual water company was providing recycled water service, or for whom the mutual water company has identified and developed specific plans to provide recycled water service, as of December 31, 2014.

SEC. 2. Section 13580 of the Water Code is amended to read:

13580. (a) A retail water supplier that has identified a potential use or customer pursuant to Section 13579 may apply to a recycled water producer or recycled water wholesaler for a recycled water supply.

(b) A recycled water producer or recycled water wholesaler that has identified a potential use or customer pursuant to Section 13579, that is within the service territory or jurisdiction of a retail water supplier, may, in writing, request a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

(c) A customer may request, in writing, a retailer to enter into an agreement to provide recycled water to the customer.

(d) (1) An entity responsible for groundwater replenishment that is a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request that retail water supplier to enter into an agreement to provide recycled water for that purpose consistent with Sections 13580.5, 13580.7, and 13580.8, as applicable. That entity may not obtain recycled water for that purpose from a recycled water producer, a recycled water wholesaler, or another retail water supplier without the agreement of the entity’s retail water supplier.

(2) An entity responsible for groundwater replenishment that is not a customer of a retail water supplier and that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request a retail water supplier, a recycled water producer, or a recycled water wholesaler to enter into an agreement to provide recycled water for that purpose.

SEC. 3. Section 13580.5 of the Water Code is amended to read:

13580.5. (a) (1) Subject to subdivision (e) of Section 13580.7, a retail water supplier that receives a request from a customer pursuant to subdivision (c) of Section 13580 shall enter into an agreement to provide recycled water, if recycled water is available, or can be made available, to the retail water supplier for sale to the customer.

(2) Notwithstanding paragraph (1), in accordance with a written agreement between a recycled water producer or a recycled water wholesaler and a retail water supplier, the retail water supplier may delegate to a recycled water producer or a recycled water wholesaler its responsibility under this section to provide recycled water.

(b) A customer may not obtain recycled water from a recycled water producer, a recycled water wholesaler, or a retail water supplier that is not the retailer without the agreement of the retailer.

(c) If either a recycled water producer or a recycled water wholesaler provides a customer of a retail water supplier with a written statement that it can and will provide recycled water to the retailer, the retail water supplier shall, not later than 120 days from the date on which the retail water supplier receives the written statement from the customer, by certified mail, return receipt requested, submit a written offer to the customer that includes the items listed in subdivision (f) of Section 13580.7. A determination of availability pursuant to Section 13550 is not required.

(d) If the state board pursuant to Section 13550 makes a determination that there is available recycled water to serve a customer of a retail water supplier, the retail water supplier, not later than 120 days from the date on which the retail water supplier receives a copy of that determination from the customer, by certified mail, return receipt requested, shall submit a written offer to the customer.

SEC. 4. Section 13580.7 of the Water Code is amended to read:

13580.7. (a) This section applies only to a retail water supplier that is either a mutual water company, formed and operating pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, or a public agency.

(b) A customer may request, in writing, a retail water supplier to enter into an agreement or adopt recycled water rates in order to provide recycled water service to the customer. The retail water supplier, by certified mail return receipt requested, shall submit a written offer to the customer not later than 120 days from the date on which the retail water supplier receives the written request from the customer that complies with subdivision (f).

(c) If no rate is in effect for recycled water service within the service area of a retail water supplier, the rate and conditions for recycled water service shall be established by contract between the retail water supplier and the customer, not later than 120 days from the date on which the customer requests a contract, or, by resolution or ordinance by the retail water supplier if it is a public agency, or by resolution if the retail water supplier is a mutual water company, not later than 120 days from the date on which the retail water supplier receives the customer's written request for an ordinance or resolution.

(d) A rate for recycled water service established by contract, ordinance, or resolution, shall reflect a reasonable relationship between the amount of the rate and the retail cost of obtaining or producing the recycled water, the cost of conveying the recycled water, and overhead expenses for providing and administering the use of recycled water service. Capital costs of facilities required to serve the customer shall be amortized over the economic life of the facility, or the length of time the customer agrees to purchase recycled water, whichever is less. The rate shall not exceed the estimated reasonable cost of providing the service, and any additional costs agreed to by the customer for recycled water supplemental treatment.

(e) To the extent feasible, the rate for recycled water shall be comparable to, or less than, the retail water supplier's rate for potable water. If recycled water service cannot be provided at a rate comparable to, or less than, the rate for potable water, the retail water supplier is not required to provide the recycled water service, unless the customer agrees to pay a rate that reimburses the retail water supplier for the costs described in subdivision (c).

(f) The offer required by subdivision (b) and subdivisions (c) and (d) of Section 13580.5 shall identify all of the following:

- (1) The source for the recycled water.
- (2) The method of conveying the recycled water.
- (3) A schedule for delivery of the recycled water.
- (4) The terms of service.
- (5) The rate for the recycled water, including the per-unit cost for that water.
- (6) The costs necessary to provide service and the basis for determining those costs.

(g) This section does not apply to recycled water service rates established before January 1, 1999, or any amendments to those rates.

Approved _____, 2014

Governor